



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Singer Furniture Co.

File: B-231915

Date: July 14, 1988

DIGEST

Protest alleging that low bidder is nonresponsive for failure to comply with affirmative action requirements of the solicitation and federal procurement law is dismissed, since compliance with these requirements concerns the bidder's responsibility and the General Accounting Office generally will not review a contracting officer's affirmative responsibility determination.

DECISION

Singer Furniture Co. protests the award of any contract under invitation for bids (IFB) No. FCNH-AT-2075-A, issued by the General Services Administration for household and quarters furniture. Singer, the apparent second low bidder, contends that the apparent low bidder, Drexel Heritage Furnishings, Inc., cannot be considered for award, since it does not meet the affirmative action requirements of the IFB.

We dismiss the protest.

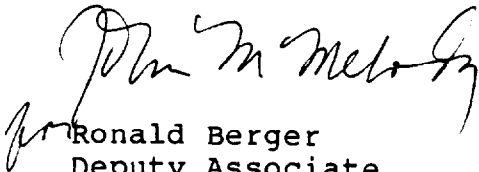
The IFB contains the standard clauses set forth in Federal Acquisition Regulation §§ 52.222-22 and 52.222-25. These clauses require a bidder to represent that (1) it either has or has not participated in contracts subject to equal employment opportunity (EEO) and affirmative action requirements, and (2) that it has or has not submitted compliance reports and/or developed and filed an affirmative action plan. The protester concedes that Drexel does have an adequate affirmative action program, but argues that its affiliate, Lexington Furniture Industries, does not. Singer contends that since Drexel and Lexington are subdivisions of the Home Furnishings Group of Masco Corporation and may act

cooperatively in this procurement, Drexel is in violation of the solicitation's requirements for affirmative action compliance and should therefore not be awarded any contract.

We have consistently held that a bidder's compliance with such affirmative action requirements as contained in this solicitation is a matter of the bidder's responsibility, rather than of bid responsiveness. See General Electric Co.; Westinghouse Electric Corp., B-228140, et al., Jan. 6, 1988, 67 Comp. Gen. _____, 88-1 CPD ¶ 6; A&C Building and Industrial Maintenance Corp., B-218035, Feb. 13, 1985, 85-1 CPD ¶ 195. These standard FAR clauses noted above are for informational purposes only and do not purport to bind the bidder to any course of action or other obligation upon acceptance of the bid. Id.

Here, before an award may be made to Drexel, the contracting officer must determine that the firm is responsible. We will not review an affirmative determination of responsibility absent a showing of possible fraud on the part of the contracting officer or that definitive responsibility criteria have not been met. See Xtek, Inc., B-213166, Mar. 5, 1984, 84-1 CPD ¶ 264. Neither has been alleged or shown here.

We dismiss the protest.


for Ronald Berger
Deputy Associate
General Counsel